

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

Application of SBC Communications Inc.,	)	
Michigan Bell Telephone Company, and	)	WC Docket No. 03-16
Southwestern Bell Communications	)	
Services, Inc. for Provision of In-Region,	)	
InterLATA Services in Michigan	)	
	)	
	)	

**REPLY COMMENTS OF AT&T CORP.**

David W. Carpenter  
SIDLEY AUSTIN BROWN & WOOD  
Bank One Plaza  
10 South Dearborn Street  
Chicago, Illinois 60603  
(312) 853-7000

Mark C. Rosenblum  
Lawrence J. Lafaro  
Dina Mack  
AT&T CORP.  
One AT&T Way  
Room 3A232  
Bedminster, NJ 07921  
(908) 532-1839

Mark E. Haddad  
SIDLEY AUSTIN BROWN & WOOD, L.L.P.  
555 West Fifth Street  
Los Angeles, California 90013  
(213) 896-6000

William A. Davis, II  
John J. Reidy III  
AT&T Corp.  
222 West Adams Street, Suite 1500  
Chicago, Illinois 60606  
(312) 230-2636

Alan C. Geolot  
R. Merinda Wilson  
Richard E. Young  
SIDLEY AUSTIN BROWN & WOOD, L.L.P.  
1501 K St., N.W.  
Washington, D.C. 20005  
(202) 736-8000

*Attorneys for AT&T Corp.*

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<b>SHORT CITE</b>	<b>FULL CITE</b>
<i>AR/MO 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of SBC Communications, Inc., et al. for Provision of In-Region InterLATA Services in Arkansas and Missouri</i> , 2001 WL 1142233 (2001)
<i>BellSouth 5 State 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application by BellSouth Corporation et al., for Provision of In-Region InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina</i> , 17 FCC Rcd. 17595 (2002)
<i>Florida/Tennessee 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application by BellSouth Corporation et al., for Provision of In-Region InterLATA Services in Florida and Tennessee</i> , WC Docket No. 02-307, FCC 02-331 (rel. December 19, 2002)
<i>Georgia/Louisiana 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application by BellSouth Corporation et al., for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , 17 FCC Rcd. 9018 (2002)
<i>Michigan 271 Order</i>	Memorandum Opinion and Order, <i>Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan</i> , 12 FCC Rcd. 20543 (1997)
<i>New Jersey 271 Order</i>	Memorandum Opinion and Order, <i>Application by Verizon New Jersey for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New Jersey</i> , 17 FCC Rcd. 12275 (2002)
<i>Pennsylvania 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , 16 FCC Rcd. 17419 (2001)
<i>Rhode Island 271 Order</i>	Memorandum Opinion and Order, <i>Application by Verizon New England for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Rhode Island</i> , 17 FCC Rcd. 3300 (2002)

<b>SHORT CITE</b>	<b>FULL CITE</b>
<i>South Carolina 271 Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corporation, et al Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in South Carolina</i> , 13 FCC Rcd. 539 (1997)
<i>Virginia 271 Order</i>	Memorandum Opinion and Order, <i>Application By Verizon Virginia Inc. et. al, for Authorization to Provide In-Region, InterLATA Services in Virginia</i> , 17 FCC Rcd. 21880 (2002)

## **INTRODUCTION AND SUMMARY**

The comments overwhelmingly confirm that SBC's section 271 application for Michigan is premature. Most notably, the Department of Justice has expressed "serious concerns" about SBC's "change management process," about the "access" afforded competitors to SBC's OSS, and about the "reliability of SBC's performance data." DOJ Eval. at 2, 6-16. The DOJ concluded that these "concerns preclude the Department from supporting this Application based on the current record." DOJ Eval. at 2; *id.* at 6 ("the concerns identified below preclude a conclusion based on the existing record that the local market in Michigan is and will remain open to competitive entry"); *id.* at 16 (DOJ is precluded from "supporting this application based on the current record").

As shown below, the comments of AT&T and other competitors amply support the DOJ's serious concerns. The record is replete with evidence that SBC has yet to provide competitors with access to the essential OSS functionality that competitors must have in order to compete on an equal footing with SBC in the market for local residential telephone service. The record further shows, and the Michigan Public Service Commission ("Michigan PSC") has confirmed, that SBC has compromised CLEC access to OSS by making changes to existing interfaces in violation of its change management obligations, and thereby disrupting CLEC efforts to compete. And the record leaves no room for reasonable dispute that SBC has yet to demonstrate that its reported performance data are accurate, reliable, and replicable.

The comments also confirm that SBC's Michigan application cannot rationally be found, on this record, to be in the public interest. As the DOJ notes, "[t]here is a tension between the PSC's conclusions about the utility of the Michigan performance data to evaluate the openness of

Michigan's market today and about the stability of the performance measure system to enable the monitoring necessary to assure nondiscriminatory behavior in the post-Section 271 future." DOJ Eval. 16 n.67. Indeed, the DOJ found itself unable to conclude on this record that the local market in Michigan "is and will remain open to competitive entry." *Id.* 6. This is not due to any lack of interest on the part of competitors. To the contrary, the record confirms that competitors have been trying for more than a year – long before SBC's 271 application was even on the horizon – to secure their position in the Michigan local market. Granting SBC's application now is therefore not in the public interest. It would remove SBC's only incentive to complete the tasks needed to open its local markets fully and irreversibly to competition, and thereby destroy the otherwise promising prospects for true local competition in Michigan.

The only remaining question is whether the Commission should give weight to the onslaught of late-filed evidence that, if prior applications are any guide, SBC is now hastily preparing to present to the Commission during the balance of the 90-day application period. The Commission should not do so. The Commission has chosen to give weight in the past to certain evidence submitted late in the application cycle, but only when such evidence involved a discrete and readily verifiable issue, such as the pricing of particular UNEs. Where, as here, the BOC's checklist noncompliance extends to a panoply of OSS issues, and is exacerbated by inadequate and unverified performance data, the proper course is to deny the application, and compel the BOC to return only when it has amassed reliable evidence that demonstrates full implementation of its obligation to provide nondiscriminatory access to OSS.

Part I of these Reply Comments reviews the evidence in the record regarding SBC's denial of nondiscriminatory access to OSS. The record is replete with evidence that SBC discriminates against CLECs in a wide range of critical OSS issues. As DOJ observes, the

record shows that SBC's change management policies continually disrupt CLEC access to SBC's interfaces. SBC has not even promised to make the changes needed to eliminate that problem, let alone demonstrated that it has implemented those changes.

CLECs also report massive problems competing with SBC that stem from SBC's inadequate OSS. In the months just prior to the filing of this application, SBC erroneously rejected tens of thousands of valid orders, caused repeated and lengthy pre-order interface outages that denied CLEC customer service representatives access to vital customer service information, failed to generate tens of thousands of timely and accurate line loss notifications, and provoked thousands of consumers to complain about CLECs engaging in double-billing. These extraordinary OSS problems continue to this day. Since the last comments were filed, SBC has erroneously rejected thousands more orders, caused additional pre-order interface outages, violated change management policies, and made multi-million dollar errors in issuing wholesale bills to 37 CLECs that have yet to be fully documented or resolved.

Part II addresses the evidence that SBC's metrics reports do not reliably and accurately describe SBC's actual performance. That is the finding of the Michigan PSC and its independent auditor, BearingPoint, and it is also the conclusion recently reached by the staff of the Illinois Commerce Commission. Not only can BearingPoint not replicate SBC's data, but SBC has now admitted using unduly narrow interpretations of the existing measures to boost its performance. For example, SBC's reports show that SBC meets PM 13 (concerning line loss notifications) only by excluding from its reports all of the faulty LLNs when *SBC* (as opposed to another CLEC) won back the customer; if the LLNs from SBC winbacks were included, SBC would fail PM 13 in both November and December 2002.



The evidence also shows that SBC's performance on the BearingPoint test is far and away the worst of any RBOC applicant that BearingPoint has reviewed. When BellSouth and Verizon submitted applications for their BOCS, they had passed between 95 percent and 100 percent of the BearingPoint test criteria. In stunning contrast, SBC has been found to pass only 11 percent of the criteria in Michigan as of the October 2002 BearingPoint report, and since the comments were filed, BearingPoint has uncovered yet more problems with SBC's data. This unprecedented record of defective performance measure reporting by a BOC applicant precludes SBC from reasonably relying on its performance reports to overcome the stark evidence of discrimination in the provision of OSS.

Part III addresses SBC's inability to show that approving its application is in the public interest. The comments confirm that approving SBC's application now, before SBC has completed the critical work needed to make its OSS available on nondiscriminatory terms, and to permit the Michigan PSC and CLECs to monitor SBC's performance through complete and accurate reports of SBC's performance, would likely ensure that this work would never be completed, and would imperil the progress to date in introducing local competition in Michigan. For all of these reasons, as the DOJ correctly concludes, the record precludes any finding that approval of SBC's Michigan application today is in the public interest.

**I. THE COMMENTS DEMONSTRATE THAT SBC IS NOT PROVIDING CLECS WITH NON-DISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS**

The comments confirm that SBC's 271 application is premature because SBC fails to provide CLECs with nondiscriminatory access to its OSS. The record instead shows that SBC obstructs its competitors through repeated interface outages, order rejections, erroneous billing

notices and inaccurate wholesale bills, that it further disrupts competitors by failing to comply with change management obligations, and that it does not make available the assistance and technical support that CLECs require to use the OSS interfaces effectively.

**A. SBC's Change Management Failures Preclude A Finding That SBC Provides Nondiscriminatory Access To Its OSS**

The record demonstrates that SBC's failure to provide CLECs with adequate notice of changes to its existing interfaces has disrupted and continues to disrupt CLECs' ability to use those interfaces, and causes harm to CLEC customers and to competition. Nothing in SBC's belated promises to improve its performance warrants a finding today of checklist compliance.

**1. SBC's Record Of Change Management Failure Is Indisputable**

The Michigan PSC acknowledged SBC's continuing change management problems in an order entered just days before SBC filed this Application. The Michigan PSC found that "SBC's recent OSS changes were not announced prior to their implementation and did negatively affect the CLECs."<sup>1</sup> See AT&T 24-25. As a result, the Michigan PSC ordered SBC to file a compliance plan (on February 13, 2003) that addressed, among other problems, how SBC intended to solve its change management problems.

The DOJ "shares the Michigan PSC's concerns" about SBC's inadequate change management. DOJ Eval. 6. It states that the comments contain extensive evidence that SBC "has often failed to inform the CLECs of other changes [than those involving new OSS releases] in processes, procedures, and policies that significantly affect their operations." *Id.* 6.

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<sup>1</sup> Opinion and Order, *In the Matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320, at 10 (1/13/03) ("Michigan Report").

For example, SBC's change management failures caused SBC to mishandle "some 15,000 AT&T service orders" as a result of SBC's changes to certain information fields in its LSOG 4 ordering system in late November 2002. *See* DOJ Eval. 6 n.23 (citing AT&T 12-13); SBC's change management failures also caused rejection of tens of thousands of other AT&T orders between September and December, 2002, including erroneous rejections associated with error codes "H325," "B103," and "G408." AT&T 12-16; DeYoung/Willard Dec. ¶¶ 61-90; DeYoung/Willard Reply Dec. ¶ 18.<sup>2</sup> AT&T had to resubmit most of these orders, causing significant delay in beginning service for its customers, and those that SBC attempted to "un-reject" and process itself were delayed even longer. DeYoung/Willard Reply Dec. ¶ 18. All of these rejections and service delays would have been prevented if SBC had complied with the Change Management Process. DeYoung/Willard Dec. ¶¶ 24, 158-164. *See also* DOJ Eval. 7 n.24 (SBC's failure to notify TDS Metrocom of policy change concerning loop conditioning created customer complaints); McLeod 9-12 (SBC fails to adhere to CMP for new releases); TDS Metrocom 21-22 (transition to LSOG 5 shows CMP is "severely flawed").

The DOJ also described the significant competitive harm resulting from SBC's "failures" with respect to notifying CLECs of changes to the interfaces:

SBC's failures may adversely affect the CLECs' ability to compete. CLEC customers suffer service deficiencies and the CLECs must consume their resources to discover the cause of the deficiencies, when SBC could simply have informed them in the first place. When the changes are mistakes, moreover, SBC's failure to inform the CLECs upon discovery deprives SBC of

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<sup>2</sup> Two clarifications regarding these erroneous rejections are noted here. First, AT&T relied on SBC to "un-reject" over 1,000 (not merely "several hundred") orders rejected erroneously with the H325 or B103 code. *Cf.* AT&T Comments 15. Second, SBC erroneous rejection of 15,000 AT&T orders under the rubric of error code G408 began in September, 2002 and continued for two months thereafter; it did not occur solely in September, 2002. *Cf. id.* at 16. *See* DeYoung/Willard Dec. ¶¶ 78-81, 82-90.

feedback information that could be used expeditiously to correct the situation.<sup>3</sup>

AT&T's experience bears out the importance of DOJ's concerns about competitive harm. SBC's change management failures have substantially disrupted AT&T's local service operations in Michigan. AT&T has devoted hundreds of hours of personnel time to investigating tens of thousands of its orders that are erroneously rejected as a result of unannounced changes, has had to submit supplemental orders after the original orders are erroneously rejected, has incurred additional charges from SBC for submission of those supplemental orders (which fall out for manual processing by SBC), thus increasing both the delay in provisioning and the risk of additional SBC errors in provisioning. These delays and errors led in some cases to canceled orders and inevitably and adversely affect AT&T's reputation. DeYoung/Willard Dec. ¶¶ 21-25; DeYoung/Willard Reply Dec. ¶¶ 51-52.

The comments also confirm that SBC's failure to provide adequate notice of changes to its existing interfaces and systems is an ongoing concern. The neglected legacy Ameritech OSS that SBC inherited have undergone an unusually rapid overhaul, and have yet to stabilize. AT&T 8-10. Indeed, some of the OSS problems that CLECs are encountering today are similar to the problems identified by this Commission in 1997 when it found Ameritech Michigan's OSS to be deficient in rejecting Ameritech Michigan's application for Section 271 authorization. AT&T 8-10; TDS Metrocom 1-5. Much remains to be done to respond to the problems identified in the BearingPoint test, and new versions of EDI will be released periodically throughout the year. AT&T 36-43. It is therefore crucial that SBC demonstrate that it is complying with an enforceable commitment to provide CLECs with adequate notice of changes

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<sup>3</sup> DOJ Eval. 7 (citations to comments and declarations submitted by AT&T and TDS Metrocom

to its interfaces and systems before it is deemed by this Commission to have fully implemented its obligation to provide nondiscriminatory access to OSS.

## **2. SBC's Compliance Plan Is Not A Sufficient Remedy**

In the face of such clear evidence today of checklist non-compliance, SBC now seeks to divert the Commission's attention to its proposed new approach to change management set forth in its February 13, 2003 compliance plan. The Commission should not place weight on this compliance plan, for three equally dispositive reasons.

First, the compliance plan is new evidence submitted by SBC after the filing of opening comments but not "directly responsive" to them.<sup>4</sup> Specifically, the compliance plan is not evidence that SBC was in compliance with its change management obligations on the date that it filed its application. Rather, the compliance plan is – at most – evidence of how SBC now promises to come into compliance with its change management obligations in the future. Such tardy promises of future compliance do not directly respond to evidence of current non-compliance, and therefore should not be given weight.<sup>5</sup> Indeed, such promises are, if anything, tacit admissions of current non-compliance, and in all events do not show that SBC is currently providing CLECs with adequate notice of changes to its interfaces and systems. In short, the compliance plan is at best irrelevant to the issue of SBC's *present* compliance with Section 271.<sup>6</sup>

Second, even if they are accepted at face value, SBC's promises of future performance are inadequate. SBC continues to deny that it has any obligation to provide CLECs with notice

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omitted).

<sup>4</sup> See *Michigan 271 Order* ¶ 50.

<sup>5</sup> See *id.*

<sup>6</sup> *Id.* ¶¶ 55, 179. See also *Texas 271 Order* ¶¶ 106, 117 (Commission will consider "evidence that the BOC has adhered to this [change management] process over time"); *Qwest Nine-State*

of many of the types of changes that it periodically makes to its existing interfaces and systems. Rather, SBC construes its obligations to extend only to the introduction of new versions and to modifications of existing documented business rules.<sup>7</sup> It expressly denies any obligation to provide CLECs with notice of other changes, including when SBC makes changes it describes as “creating an edit to enforce an existing rule, or further tightening an edit of an existing rule,” or when SBC discovers that a system did not “turn up as planned.”<sup>8</sup> There is no basis in the language of SBC’s 13-State Change Management Process (CMP) for the fine distinctions in notice-obligations that SBC now seeks to draw.<sup>9</sup> And under this narrow approach to change management, SBC would have deemed itself obligated by the CMP to notify AT&T of only one of the changes that led to the erroneous rejection of tens of thousands of AT&T orders between September and December 2002. DeYoung/Willard Reply Dec. ¶ 14.

Nevertheless, relying on this unduly narrow construction of its obligations, SBC now promises only to provide CLECs with “courtesy” notice of the changes SBC (erroneously) believes it has no obligation to provide. These include situations outside the normal planned quarterly release of changes, when SBC is “tightening an edit or business rule” and when it “begins enforcing” an existing business rule.<sup>10</sup> Even in this proposal, SBC will provide such “courtesy” notice only for changes that SBC determines, in its sole discretion, “may reasonably be expected to be CLEC-affecting.”<sup>11</sup>

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271 Order ¶ 132.

<sup>7</sup> SBC Compliance Plan, Att. F at 3.

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *See, e.g.*, SBC 13-State Uniform Change Management Process §§ 1.0, 3.0, 6.3.1, 6.3.2; DeYoung/Willard Reply Dec. ¶¶ 14-20.

<sup>10</sup> SBC Compliance Plan, Att. F. at 6.

<sup>11</sup> *Id.* at 4.

SBC's promises are themselves patently inadequate. An obligation to provide only "courtesy" notice is no obligation at all. CLECs need an enforceable commitment from SBC to provide notice of all changes to existing interfaces and systems. SBC also cannot retain sole discretion to provide notice only of changes that *SBC* believes may affect CLEC operations. As the existing record amply shows, SBC lacks the knowledge to make such predictive judgments accurately. DeYoung Willard Reply Dec. ¶¶ 24-26, 30-37. Indeed, SBC's proposed restriction is nothing more than a convenient excuse that SBC will be able to invoke whenever it fails to grant CLECs the "courtesy" of notice of a systems or interface change. That is why the CMP requires SBC to provide CLECs with advance notice to CLECs of *all* changes to the interface – regardless of SBC's subjective view about whether such changes will affect CLECs. Thus, although the DOJ notes that SBC's compliance plan contains some "positive steps," it notes that the plan is incomplete in important ways, and urges the Commission to consider "whether a more extensive review is necessary to prevent recurrence of the [change management] problems."<sup>12</sup>

For these reasons, the inadequate promises of SBC's tardy compliance plan should be given no weight. Nevertheless, if the Commission were inclined to make predictions about SBC's future performance with respect to change management, it should give weight not to SBC's paper promises, but to its actual conduct. Since filing its application, SBC has continued to make changes to its interfaces without providing notice to AT&T and other CLECs. As a result, SBC's systems are continuing to reject AT&T orders in error.

Most recently, beginning on February 18, 2003, SBC began erroneously rejecting what eventually amounted to over 1,000 AT&T orders in Michigan (and over 3,000 orders throughout

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<sup>12</sup> Specifically, DOJ notes that SBC's plan does not "address SBC's failure to inform CLECs of mistakenly introduced changes and of the efforts SBC is undertaking to correct those mistakes."

the Ameritech region) because of an unannounced SBC systems change. SBC reportedly made a change to its EDI mapping that SBC purportedly thought was needed to render the mapping consistent with its business rules and documentation. DeYoung/Willard Reply Dec. ¶¶ 30-37. For that reason, SBC apparently did not anticipate that the change would affect CLEC operations.

In fact, SBC's unannounced change immediately triggered hundreds of rejected orders. The source of the problem was eventually traced to an inconsistency in SBC's documentation with respect to the Directory Activities or "DACT" field on an EDI order. AT&T had coded its systems to be consistent with the text of SBC's local service order guidelines (which made filling in the DACT field optional), rather than to a footnote in those same guidelines (which required that the DACT field be filled in). None of AT&T's test orders with an empty DACT field was rejected in SBC's test environment, and AT&T then successfully sent thousands of such orders to SBC between December 9, 2002 (when AT&T Consumer Services migrated to LSOG 5 ) and February 17, 2003 (the last day before SBC's unannounced change). Had SBC notified AT&T of SBC's intended change, AT&T could have determined whether to object to the change, or to modify its side of the interface to avoid the disruption to AT&T's customers that SBC's stealth change otherwise caused. *Id.*

The DACT episode is illustrative of many of the problems CLECs continue to face with SBC. It is stark evidence that SBC's documentation and test environment are not reliable guides to SBC's production environment. DeYoung/Willard Reply Dec. ¶ 41. It also illustrates how SBC continues to make errors that cause its systems to reject CLEC orders and force CLECs to resubmit (or "supplement") their orders. Such erroneous rejections are of particular competitive



concern, not only because they delay customer provisioning and increase CLEC costs, but because they cause CLECs to have to resubmit their orders, thereby effectively shielding the originally rejected orders from disclosure and scrutiny under SBC's performance reports.

Moore/Connolly Dec. ¶ 26; DeYoung/Willard Reply Dec. ¶¶ 43, 51-53.

Most importantly, however, the DACT episode provides stark evidence that SBC's proposed compliance plan is inadequate to provide CLECs with nondiscriminatory access to its OSS. Under the compliance plan, SBC has not offered even to give "courtesy" notice in situations, like the DACT field, where SBC believes that it is merely conforming its EDI mapping to a pre-existing requirement, and thus is making a change that it believes would not adversely affect CLECs. DeYoung/Willard Reply Dec. ¶ 44. As the DACT episode shows, SBC simply will not know when (or is indifferent to the fact that) its existing documentation is inadequate or inconsistent, and will not know how CLECs have designed their systems in response to whatever documentation SBC has provided. SBC can thus presume that its unannounced changes to existing interfaces and systems will not affect CLECs only at the CLECs' peril. Any approach to change management that permits SBC to make any changes it wants to existing interfaces and systems so long as SBC decides for itself that those changes will not affect CLECs is thus destined to perpetuate the cycle of SBC-forced rejections and errors that have plagued SBC's provision of access to OSS since the outset of CLEC entry in Michigan.

Finally, if any more evidence that SBC's "failures" (DOJ Eval. 7) with respect to change management were needed, SBC provided it by failing to advise CLECs of changes made to the "interface definition language" of "IDL" used for designing pre-ordering inquiries over the "CORBA" interface. By neglecting to notify CLECs of these changes, either through an Accessible Letter or other means, SBC effectively forced CLECs to engage in a protracted trial-

and-error approach to developing their software code for sending pre-ordering inquiries over CORBA. Once again, SBC's pattern of making changes to its interfaces and systems without notifying CLECs serves only to delay and disrupt CLEC access to SBC's bottleneck OSS, and denies CLECs the ability to compete fairly with SBC in the local Michigan market.

DeYoung/Willard Reply Dec. ¶¶ 45-52.

In the original *Michigan 271 Order*, this Commission held that a BOC may not be found to be "providing" an unbundled network element unless and until the BOC had "a concrete and specific legal obligation" to provide that element and had demonstrated that it is "presently ready" to furnish it in the quantities and at a "level of quality" that competitors reasonably require.<sup>13</sup> The Commission has never altered that definition. SBC is not providing CLECs with such access today. Its refusal to adhere to the CMP and implement and follow sound change management practices is hugely destabilizing and disruptive to competitive entry. It is reason enough in itself to find that SBC is not yet providing CLECs with nondiscriminatory access to OSS, and SBC's Michigan application should be denied for that reason alone.

## **B. The Comments Confirm That SBC's Commercial OSS Perform Poorly**

For CLECs to compete effectively with SBC in the local Michigan market, they need access equivalent to SBC's to each of the OSS functions that Michigan Bell's OSS uniquely provide. The comments confirm that SBC has yet to provide CLECs access comparable to that enjoyed by Michigan Bell.

### **1. Pre-Ordering**

The comments confirm that significant outages of SBC's CORBA pre-ordering interface have interfered with CLECs' ability to retrieve customer records and to submit customer orders.

SBC-imposed outages on AT&T effectively denied AT&T about 500 person-hours of use of the interface during the October-December 2002 period. AT&T 11; DeYoung/Willard Reply Dec. ¶ 56 n.16. WorldCom similarly reports that it suffered 16 separate outages during the period November 2002-January 2003. WorldCom 2-3. And in January 2003 CORBA began erroneously deleting zip codes from customer records, making it impossible for AT&T to submit orders for more than 300 customers in Michigan and Ohio that month. AT&T 11-12.

Most recently, in February 2003, SBC caused yet more substantial outages on its CORBA interface. Five separate outages occurred during that month – the highest number of outages during a given month since May 2002. DeYoung/Willard Reply Dec. ¶ 57. The outages effectively denied AT&T approximately 140 user-hours during that month. Over the last year, no other RBOC (or even Ameritech’s affiliates, SWBT and PacBell) has caused interface outages comparable to those in the Ameritech region. *Id.* ¶ 57 & nn.17-18. SBC’s inability to stop these interface outages confirms that SBC has yet to stabilize its legacy Ameritech systems and provide CLECs with nondiscriminatory access to OSS.

## **2. Ordering and Provisioning**

As for ordering and provisioning, the comments demonstrate overwhelmingly that SBC has yet to provide CLECs with access comparable to that Michigan Bell enjoys. WorldCom reports that SBC routinely fails to send rejection notices on a timely basis, with the result that WorldCom has not learned about the order rejection (which is often erroneous) until it contacts SBC to check on an anticipated completion notice that has never arrived. The result is a delayed order and a disappointed customer. WorldCom 5. Moreover, significant numbers of orders submitted in accordance with SBC’s documentation do not flow through SBC’s systems and

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<sup>13</sup> *Michigan 271 Order* ¶ 110.

instead require manual processing. The problem is so severe that CLECs seeking to serve their customers have undertaken their own manual “work-arounds” and software changes to get orders through SBC’s OSS. McLeod 5. Such work-arounds confirm that SBC has yet to provide CLECs with reliable and stable electronic access to OSS that is comparable to what Michigan Bell enjoys.

For its part, AT&T demonstrated that Michigan Bell has improperly rejected tens of thousands of AT&T orders between September 2002 and January 2003 as a result of SBC system errors. AT&T 12-16. These include the erroneous rejections caused by SBC’s failure to adhere to the change management process discussed above, as well as rejections with other causes. *Id.* No BOC 271 applicant has had an application approved in the face of such a record of ordering problems, and this applicant should fare no differently.

Indeed, the record shows that Michigan Bell still continues erroneously to reject thousands of AT&T orders, including more than 1,000 in Michigan since the opening comments were filed. In addition to the DACT problem described above, Michigan Bell continues erroneously to send AT&T rejection notices on certain orders with the error code “H332.” Although SBC promised to fix the problem on February 12, 2003, it did not do so, and its attempt on February 19 was unsuccessful; it is currently not scheduled to fix the problem until March 7, 2003. DeYoung/Willard Reply Dec. ¶¶ 60-63.

The comments also demonstrate that SBC’s manual process for resolving so-called “working service conflicts” “creates a potential for significant problems” (DOJ Eval. 12) and is another aspect in which SBC discriminates against CLECs. SBC not only faxes a notice to the CLEC whenever the CLEC requests a new line at a location where working service is already

provided, it then cancels the order whenever the CLEC fails to respond; this process leads to delays and cancelled orders. AT&T 13-14; WorldCom 6-8.<sup>14</sup> When SBC introduced this process, it sent AT&T over 2000 faxes (800 which were sent in error) in the first month, and through November 2002, SBC's process had delayed processing of more than 5000 orders. This faxed process and attendant delays, errors, and cancellations, is incompatible with mass market competition. As the Justice Department notes, it has "long emphasized the importance of using automated, electronic processes in inter-carrier ordering and provisioning communications, in part to reduce the possibility that simple errors will interfere with order processing." DOJ Eval. 12 & n.55.<sup>15</sup>

SBC also denies CLECs nondiscriminatory access to its OSS in other ways. SBC has yet to provide CLECs with adequate documentation to permit them to submit Local Service Requests under LSOG version 4.02 (rather than Access Service Requests) to convert special access circuits to UNEs. DeYoung /Willard Reply Dec. ¶¶ 64-66. SBC also recently revealed its previously undisclosed practice of withholding transmission of Billing Completion Notices (BCNs) during time periods selected by SBC for internal "billing reconciliation processes," thus delaying AT&T's access to BCNs for as much as 10 days. *Id.* ¶¶ 67-72. This practice compounds the delays already caused by another SBC error in late December 2002. See DOJ Eval. 7 n.25.

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<sup>14</sup> SBC introduced this facsimile process without complying with its change management process. AT&T 13-14.

<sup>15</sup> DOJ notes that SBC does not propose to introduce automatic electronic notification for working service conflicts until its release of LSOG 6, which SBC anticipates will take place in September 2003, DOJ Eval. 12-13, a promise of performance far too remote and speculative to be given weight here. Moreover, SBC's record of delays and errors in introducing new interfaces (*see* AT&T 9-10) suggests that the effective date of any such future fix may be months later still.

Finally, the record shows that SBC has yet to demonstrate that it can accurately provision the orders it receives and does not mistakenly reject. SBC's compliance plan acknowledges the need to improve its provisioning of complex orders, including resale and UNE-P service orders, where BearingPoint has found that SBC has not met BearingPoint's benchmark standard of 95 percent provisioning accuracy. *See* DeYoung/Willard Reply Dec. ¶¶ 73-74. SBC's reported data regarding its performance for AT&T is further evidence that SBC commits too many provisioning errors. Of the 1,393 AT&T trouble tickets in Michigan that SBC included for September and October 2002 under Performance Measurement 35 (Percent of Trouble Reports Closed within 30 days), 130 of those tickets – or 9.3 percent of the total – were closed with code 0525, which is the trouble code used by SBC to signify provisioning errors made by SBC on flow through orders. These data, which likely do not capture the full extent of SBC's deficient performance, show that a significant percentage of AT&T's customers are not receiving the features and products that they ordered due to SBC's provisioning errors. *DeYoung/Willard Reply Dec. ¶ 75.*<sup>16</sup>

In sum, SBC has failed in numerous respects to demonstrate that it is providing CLECs with nondiscriminatory access to the ordering functionality that is critical to a CLEC's ability to compete, particularly in the market for local residential service. The Commission should therefore conclude that SBC has not yet fully implemented its checklist obligation with respect to nondiscriminatory access to OSS.

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<sup>16</sup> As described more fully in the Reply Declaration of Karen Moore, Timothy Connolly, and Sharon Norris, *see id.* at ¶¶ 136-38, the reported data for PM 35 contain no trouble tickets closed under code 0526 (which is the code that SBC issues to signify provisioning errors made by SBC when an order falls out for manual handling), even though one would expect trouble tickets to be closed using this code.

### **3. Billing**

SBC's performance is similarly defective with respect to billing. The comments demonstrate that SBC still does not provide CLECs with critical line loss notifications ("LLNs") on a prompt and accurate basis, and also errs in the provision of billing completion notices ("BCNs"). The comments further show that SBC has failed to demonstrate that it can consistently generate accurate wholesale bills.

#### **a. Line Loss Notification**

The LLN notifies a CLEC that the customer has migrated to another CLEC or to SBC, and thus alerts the CLEC to stop billing that customer. If SBC fails to generate a timely and accurate LLN, a CLEC will generally have no reason not to continue billing the customer. This results, in turn, in the customer receiving bills from both the CLEC and the customer's new service provider. As the DOJ correctly notes, the "customers naturally will blame the former carrier," even though the fault lies solely with SBC, and the record contains evidence of "thousands of complaints from [Z-Tel's] former customers over double-billing from this cause" as well as complaints filed with "regulatory bodies and customer groups." DOJ Eval. 9 & n.35. Faulty provision of LLNs thus impairs the reputation of CLECs and drives up their costs. DOJ's Evaluation aptly summarizes the importance of prompt and timely LLNs: "[p]recise delivery of line loss notifications is vital for a healthy competitive environment in Michigan." *Id.* 8-9.

SBC's deficient performance with respect to line loss notification is a long-standing SBC problem. SBC has been unable to provide timely and accurate line loss notifications ("LLNs") to CLECs for two years. AT&T 18-19; WorldCom 10-11; Z-Tel 3-5. In December 2001, the Michigan PSC identified SBC's inability to provide accurate LLNs as "one of the most serious of the problems raised in this case," stated that the "[f]ailure to provide timely notice of

migrations is an egregious and anticompetitive neglect of Ameritech Michigan's duty," and ordered SBC to resolve the problem promptly.<sup>17</sup> In February 2002, the Illinois Commerce Commission found, in response to a complaint from Z-Tel, that SBC's "late and inaccurate" LLNs had "unreasonably impaired" Z-Tel's provision of local service, and ordered emergency relief. *See* DOJ Eval. at 10 & nn. 41-42 (quoting Illinois Commerce Commission Line Loss Notice Order at 16).

In a report to the Michigan PSC on July 2, 2002, SBC claimed that it had resolved its LLN problems.<sup>18</sup> Yet it plainly had not. Indeed, SBC failed to provide over 10,000 accurate and timely LLNs to AT&T alone for the last five months of 2002. AT&T 18-19. Z-Tel and WorldCom also report continuing and serious problems with receiving proper LLNs. Z-Tel 5 & Walters Dec. ¶¶ 7-9; WorldCom Lichtenberg Dec. ¶¶ 20, 21. As the DOJ noted, the comments contain evidence of "a long list of problems," including "missing notifications, notifications lacking conversion dates, notifications omitting the disconnected telephone number, and unreadable notifications." DOJ Eval. 9 & nn. 36-40 (citing comments of AT&T, Z-Tel, and WorldCom).

Given this record, the Michigan PSC's statement in early January 2003 that SBC had now "met its line loss obligations in regard to Section 271" lacks any reasonable factual foundation. It certainly cannot be based in SBC's performance reports, because – as the DOJ

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<sup>17</sup> Opinion and Order, *In the Matter, on the Commission's Motion, to Consider Ameritech Michigan's Compliance with the Competitive Check List in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320 (12/20/01), at 6-7.

<sup>18</sup> SBC Ameritech Michigan's Final Report on the Line Loss Notification Issue, *In the Matter, on the Commission's Motion, to Consider Ameritech Michigan's Compliance with the Competitive Check List in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320 (7/2/02), at 1. In Illinois, SBC has announced that the regionwide team established by SBC to resolve LLN problems has been disbanded, WorldCom 5, even though it clearly has not finished



confirms – the LLN-related metrics are not designed to capture instances in which SBC fails to send an LLN or sends a faulty (unreadable or incomplete) LLN. DOJ Eval. 9 n.36; *see* AT&T 31. Indeed, the Michigan PSC ordered SBC to make yet further improvements in its LLN processes precisely because it “cannot assume that a trouble free [LLN] environment will now exist.”<sup>19</sup>

The Michigan PSC’s continuing concerns have proven well-founded, for SBC’s LLN environment is still far from “trouble free.” On January 31, 2003, SBC provided WorldCom with 3,000 unreadable LLNs – stark evidence that SBC has yet to master this most basic LLN functionality. WorldCom 10-11. AT&T also continues to experience LLN problems. In January and February, 2003, SBC has sent some LLNs to AT&T’s consumer services unit (“ACS”) by facsimile rather than by EDI, and has generated other LLNs in error. DeYoung / Willard Reply Dec. ¶ 83. And SBC has failed, over the last four months, to provide AT&T’s business services unit (“ABS”) with approximately 1700 LLNs over the LEX GUI interface that AT&T has requested rather than by facsimile. *Id.* ¶¶ 78-82. In short, notwithstanding SBC’s inevitable promises to improve its performance, its LLN failures continue to mount. The record contains overwhelming evidence that SBC has not demonstrated that its systems provide CLECs with accurate, timely, and reliable LLNs.

Against this record, SBC has mustered only the assertions in its Compliance Plan that it has developed “a reliable process for delivery of line loss notifications” – a claim that the record demonstrably refutes – and has promised “an improvement” in notifying CLECs about future LLN problems. While improved notification of LLN problems would be helpful, what SBC

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its job.

<sup>19</sup> Michigan Report 69.

really needs to do is fix the root causes of the LLN problems so that SBC can finally and reliably generate timely and accurate LLNs. Nothing in the compliance plan demonstrates that SBC has yet accomplished this critical and basic requirement.<sup>20</sup> DeYoung/Willard Reply Dec. ¶¶ 87-90.

Accordingly, the DOJ has correctly concluded that SBC “has not established a suitable level of performance” and has not yet shown itself “capable of providing effective wholesale support in this area.” DOJ Eval. 10. This Commission should affirm that conclusion. Although “SBC must introduce further evidence” to show that its LLN performance meets its nondiscrimination obligation (*id.*), that evidence may not be properly introduced in this proceeding. Under the Commission’s “complete-when-filed” rule, all evidence necessary to show that SBC is currently providing CLECs with nondiscriminatory access to its OSS must be included with its application. Because timely and accurate provisioning of LLNs remains, at best, a work in progress, SBC’s current application must be denied.

#### **b. Billing Completion Notices**

The comments also discuss the harmful effects on CLECs of SBC’s inability to provide accurate and timely Billing Completion Notices (“BCN”). The BCN serves as the notice of transfer of service to the CLEC and must be received before the CLEC can submit a subsequent order for that customer. AT&T 16. In the past four months, SBC has failed to provide timely and accurate BCNs for tens of thousands of AT&T orders. *Id.* 16-17. SBC discovered the error that caused this problem on December 5, 2002, yet waited until January 29, 2003, to notify

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<sup>20</sup> Indeed, the LLN promises in SBC’s compliance plan promise cannot reasonably be given *any* weight, given that SBC’s LLN problems have persisted long after the Michigan PSC (December 2001) and Illinois PSC (February 2002) ordered SBC to resolve its LLN problem.

CLECs of the problem, which likely contributed to SBC's failure "expeditiously to correct the situation." DOJ Eval. 7 & n.25.

Some CLECs also use the BCN as the trigger to start billing the new customer. *See, e.g.,* WorldCom 4. SBC has sent some BCNs to WorldCom prematurely, thus causing double-billing of customers. Even where SBC has notified WorldCom of premature BCNs, it has done so by email, which entails manual processing and has not allowed WorldCom to prevent the double-billing of customers. WorldCom 3-4.

**c. Inaccurate Wholesale Bills**

To satisfy Section 271 requirements, SBC must provide wholesale bills to CLECs that are readable, auditable, and accurate. *Pennsylvania 271 Order*, ¶¶ 22-23. The comments and SBC's recent January 2003 "data bash" make clear that SBC fails to meet that standard.

Numerous CLECs report that SBC's wholesale bills are riddled with errors. Z-Tel 5-6; Mich. CLEC Assoc. 11-12; TDS Metrocom 25; WorldCom 12-13. BearingPoint Exception 119 entitled "Billing Accuracy and Completeness" notes the basic problem: "SBC does not follow a systematic process for verifying the accuracy and ensuring proper formatting of bills produced by the Carrier Access Billing System (CABS)." As DOJ notes, SBC's performance data do not measure whether the wholesale bills themselves are accurate. DOJ Eval. 11 n.48.

The comments of CLECs make clear that the bills are not accurate. For example, Z-Tel has received over 7500 double billing complaints, largely associated with SBC's inability to provide timely and accurate LLNs. Given that Z-Tel has only 22,000 current customers in Michigan, Z-Tel has thus received complaints from the equivalent of an astounding 30 percent of its customer base. Z-Tel 5; Walters Dec. ¶¶ 7-9. Z-Tel has also encountered over 330 instances

in which it submitted a disconnect order for its customer, only to be told by SBC that it could not disconnect the line because the line did not serve a Z-Tel customer; notwithstanding SBC's position, SBC continued to bill UNE charges to Z-Tel for that line after submission of the disconnect order. Z-Tel 5.<sup>21</sup>

Z-Tel is not alone. AT&T has also experienced double-billing. DeYoung/Marin Dec. ¶¶ 5-13. TDS Metrocom states that since it began operations in 1998 "it has *never* received an accurate bill from SBC." TDS Metrocom 25 (emphasis in original). LDMI reports that 58 percent of billing entries received from SBC were incorrect and that *all* the errors involved overbilling and not underbilling. Mich. CLEC Assoc. 11-12. In the past nine months, WorldCom has repeatedly received wholesale bills in which the number of transactions billed by SBC does not remotely match the number of WorldCom transactions submitted to SBC. WorldCom 12-13. The lack of accurate wholesale bills make it impossible for CLECs to audit those bills on a timely basis to ensure that its customer charges are accurate. Z-Tel 5-6.

The problems that CLECs have reported with SBC's faulty wholesale billing is now proving, however, to be only the tip of the iceberg. Since comments were filed, SBC has revealed the results of a January 2003 "data bash" of its internal billing records that uncovered massive problems with SBC's wholesale bills. Touted by SBC as a "quality assurance

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<sup>21</sup> In light of the significant problems with SBC's wholesale bills, CLECs must devote substantial personnel and systems resources to correct SBC's billing errors and obtain adjustments to wholesale bills. TDS Metrocom 25 (assigns five employees to review and dispute SBC bills). Moreover, SBC has failed to establish appropriate procedures for resolving disputed bills, and as a result, CLECs have large numbers of billing disputes outstanding for significant periods of time. Z-Tel 5-6 & Walters Dec. ¶ 13 (Z-Tel has over 380 outstanding billing disputes with SBC, of which two-thirds are over four months old); Mich. CLEC Assoc. 11 & Gleason Dec. ¶ 10 (LDMI Telecommunications).

validation” of its billing records,<sup>22</sup> SBC’s unilateral attempt to reconcile two sources of data for its wholesale bills has shown that SBC’s wholesale billing is frequently radically wrong. SBC compared its CABS billing records to its provisioning records and discovered that over 138,000 UNE-P circuits (out of fewer than one million UNE-P lines) were being billed on the wrong CLEC wholesale bill. DOJ Eval. 11 n.47. As a result, SBC is now undertaking to provide CLECs with information on the 76,000 UNE-P “Circuits Added” that now should be included on CLEC wholesale bills and the 62,000 UNE-P “Circuits Deleted” that incorrectly appeared on Michigan CLEC bills. To date, however, SBC has provided little in the way of supporting data, and as a result it has been impossible for CLECs to determine if SBC’s billing changes are accurate.. DeYoung/Marin Reply Dec. ¶¶ 13-19.

The financial impact of the “data bash” is highly significant for the 37 CLECs affected by the changes. As a result of the 138,000 circuit changes, SBC is now seeking to include in its February and March wholesale bills more than \$16.9 million in corrected billing charges (\$9.3 million in credits and \$7.6 million in debits) relating to its UNE-P wholesale billing. Not all CLECs will be affected equally; some will receive net credits, while others will be presented with enormous bills, including (in AT&T’s case) an estimated \$1.4 million payment demand. Yet SBC has yet to provide AT&T (and to AT&T’s knowledge, any CLEC) with the supporting data needed to review and evaluate whether SBC’s extraordinary claims are valid. In all likelihood, given the historic unreliability of SBC’s data, the “data bash” process will lead to disputes over discrepancies in SBC’s data and cause CLECs to invoke the time-consuming dispute resolution process with SBC. DeYoung/Marin Reply Dec. ¶¶ 20-25. Indeed, given that it is SBC’s obligation to provide CLECs with accurate wholesale bills, it is SBC – and not the

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<sup>22</sup> SBC Accessible Letter CLECAM 02-509 (Nov. 21, 2002).

CLECs – that should the bear the financial burden of inaccurate billing on a scale as massive as SBC now purports to have uncovered. But in all events, far from proving that SBC is generating accurate wholesale bills, SBC’s January data bash has proven only and beyond question that SBC is not.

Finally, although the DOJ expresses hope (Eval. 12) that this “data bash” will resolve SBC’s problems with billing accuracy, that hope is misplaced. The “data bash” is not a CLEC/SBC data reconciliation, but a unilateral attempt by SBC to reconcile two separate SBC data sources. SBC has not answered, but merely generated, numerous questions, such as how the inconsistencies have arisen in those two billing data sources in the first place, how SBC’s failure to generate timely and accurate LLNs has affected these billing sources, which source is accurate for which data, and why. Until these issues are addressed and resolved, the only thing that is assured is that there will be more “data bashes” by SBC,<sup>23</sup> more disputes with CLECs, more SBC promises of compliance plans and system upgrades, and more need for regulatory oversight and enforcement of SBC’s fundamental obligations to provide CLECs with effective wholesale support. DeYoung/Marin Reply Dec. ¶¶ 24-25.

### **C. The Comments Confirm SBC’s Inadequate Support For OSS Access**

The comments also confirm that SBC has failed to provide CLECs with the support – in the form of change management, accurate documentation, a proper test environment, and user support – that they need to access SBC’s interfaces in a manner equivalent to what SBC enjoys.

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<sup>23</sup> SBC’s compliance filing on billing auditability does not address the substantive problems with SBC’s wholesale billing but merely offers additional billing training sessions. As such, this compliance program will not resolve the outstanding problems with the accuracy of SBC’s wholesale bills.

The outpouring of comments testifying to SBC's change management failures is discussed in Part I.A, *supra*. But the record also confirm SBC's shortcomings in other key areas of support.

SBC's ill-fated introductions of the LSOG 4.0 and LSOG 5.0 interfaces are prime examples of the problems that CLECs experience in dealing with SBC's unstable OSS environment. The introduction of each interface was delayed by software and implementation problems, and once introduced, the releases were constantly being changed with patches and upgrades because the releases were riddled with errors. AT&T 9-10; McLeod 11-13; TDS Metrocom 21. Indeed, the release of LSOG 5.0 was delayed for five months, and SBC made corrections to its LSOG 5 documentation in more than 175 instances and issued over 1000 pages of revisions to the documentation. AT&T 10. The documentation problems continue to the present day, with AT&T most recently discovering (see Part I.A, *supra*) that SBC had failed accurately to document the requirements for its DACT field, for IDL, and for converting special access circuits to UNEs. DeYoung/Willard Reply Dec. ¶¶ 32-36, 45-48, 66-68. SBC thus compounds the problems of its unstable OSS and inadequate implementation of change management by failing to provide CLECs with consistent and accurate documentation.

SBC also continues to impose unreasonable restrictions on a CLEC's use of its test environment. AT&T's opening comments described SBC's current rule prohibiting CLECs from retesting a particular transaction "more than three times." AT&T 26. No other RBOC imposes such a limitation. DeYoung/Willard Reply Dec. ¶ 101. Although SBC has since indicated some willingness, perhaps during the third quarter of 2003, to alter this limitation, its plans involve only a trial, and it has provided no specifics on the nature or timing of any alternative. The current restriction thus remains in force, and it is starkly discriminatory. There is no evidence that SBC imposes any comparable limitation on its own ability to test transactions before

implementing any change to its use of its OSS. *Id.* ¶¶ 101-02. SBC's arbitrary three-test limit on CLECs serves only to hinder their ability to ensure, prior to handling customer needs, that their systems and SBC's are working smoothly and efficiently. *See also* McLeod 11-12 (SBC "fails to provide a suitable Joint Test Environment").

Finally, the record confirms SBC's determination to cut back on the account support that CLECs need to make effective use of SBC's OSS. AT&T's comments described the extensive and likely strategic cutbacks in resources available to CLECs that SBC has chosen to make disproportionately in states with UNE rates low enough to attract competitive entry through the use of UNE-P. AT&T 27-29. SBC now states that further cutbacks are in the offing. Speaking at an investor conference on February 25, 2003, SBC's CEO Randall Stephenson stated that "given the FCC's UNE-P decision, we're going to have no choice but to go back and take another look at the force levels that we employ in the business and the capital investment levels that we have in the business right now."<sup>24</sup> Thus, far from showing signs of reversing its previously announced policy of punishing states that set low UNE rates with job cuts and resource reallocation away from CLEC support, SBC will if anything make further cuts. This development simply underscores the need to ensure that SBC has fully implemented its OSS obligations before 271 relief is granted. Thereafter, SBC will not only have lost the "will" but will have redeployed the resources needed to meet its promises of improved performance.

#### **D. SBC Fails To Provide CLECs Nondiscriminatory Access To Line-Splitting**

The comments also confirm SBC's failure to provide CLECs with nondiscriminatory access to the support needed to offer line-splitting. AT&T's comments described several

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<sup>24</sup> Randall Stephenson, Speech at Merrill Lynch Global Communications Investors Conference, February 25, 2003.



important obstacles to line-splitting that SBC currently imposes. AT&T 52-54. These obstacles are important because, as the DOJ states, AT&T's new line-splitting partnership with Covad "could provide significant competition to the combination of voice and DSL services now offered by" SBC and other incumbent LECs. DOJ Eval. 13.

DOJ notes, however, that "competition in this important arena [is] seriously threatened" by the service interruptions that SBC has threatened to impose with the disconnection of a line-splitting arrangement. DOJ Eval. 13 n.58. Specifically, SBC warns that such a disconnection could leave a customer without voice service for up to seven days, with no guarantee of the same telephone number at the end of that period. AT&T 53-54.

DOJ also notes that SBC's unique "versioning" restrictions also raises an important issue. DOJ Eval. 13 n.58. Although DOJ states its expectation that the versioning problem will be resolved in state "collaborative discussions" (*id.*), to date SBC has given no indication of any willingness to alter its untenable position that has led to the problem in the first place. *See* DeYoung/Willard Reply Dec. ¶¶ 94-95. As AT&T explained in its opening comments, SBC's restrictions on versioning will prevent any CLEC partnerships, whether for line-splitting or any other product, from using SBC's EDI interfaces that are essential to mass-market residential competition. AT&T 22-23. And as McLeod also notes, SBC's versioning requirements also adversely affect its ability to compete. *See* McLeod 14-15.

DOJ thus correctly concludes that the obstacles to line-splitting that SBC has raised "merit the Commission's consideration." DOJ Eval. 13. Indeed, absent stark new evidence that SBC has eliminated the obstacles it has created to effective use of line-splitting, these obstacles alone warrant denial of this application.

**E. The OSS Defects Are Too Extensive For SBC To Overcome With Late-Filed Evidence**

For all of the reasons described above, it is clear that the record of SBC's performance, as of the date of SBC's Michigan application, does not support SBC's claim to have fully implemented its obligation to provide CLECs with nondiscriminatory access to OSS. The comments of the Michigan PSC (for example, in demanding promises of further action from SBC in the form of a compliance plan to address, *inter alia*, ongoing change management and line loss notification problems) and the Evaluation of the DOJ (declining to support the application on the current record) confirm that SBC, as of the date of its filing, has yet to demonstrate that it is providing CLECs with nondiscriminatory access to OSS. For this reason, SBC's application should be denied. SBC should be compelled to wait to resubmit its Michigan application until after it can prove, through documented improved performance, that it has taken the steps needed to eliminate the chronic OSS problems, including change management failures, interface outages, erroneous order-rejections, faulty line loss notices, inaccurate billing, and so on, that each deny CLECs access equal to SBC's access to the systems needed to support local competition in Michigan.

Nevertheless, SBC undoubtedly will now attempt, through reply comments and ex parte submissions, to develop a new record of promises and changed behavior to permit approval of its application on that alternative evidentiary record. Of course, AT&T welcomes real change from SBC. But any request to have the Commission rely on such late-filed evidence could not be reconciled with the Commission's rule "that a BOC's section 271 application must be complete on the day it is filed."<sup>25</sup> Under the complete-when-filed rule, a BOC must show that it has

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<sup>25</sup> See, e.g., *Michigan 271 Order* ¶ 50; *South Carolina 271 Order* ¶ 38; *Updated Filing*

already fully implemented each item of the competitive checklist at the time it chooses to file its application.<sup>26</sup>

By waiting until reply comments (or thereafter) to provide evidence that purports to show that SBC is affording competitors nondiscriminatory access to OSS, SBC would effectively require this Commission to resolve crucial evidentiary disputes on a range of fact-intensive issues without the benefit either of the state commission's evaluation of all the evidence and without affording interested parties a full opportunity to comment and be heard thereon. In the past, this Commission has resisted such BOC requests on the ground that it "has neither the time nor the resources to evaluate a record that is constantly evolving,"<sup>27</sup> choosing instead to rely on the "comprehensive factual record" developed in state proceedings regarding checklist compliance.<sup>28</sup> As the Commission long ago observed, the BOC controls the timing of its application.<sup>29</sup>

For this reason, the Commission has never approved a section 271 application where the evidence in the application as filed and in the opening comments showed poor OSS performance over a range of OSS issues, and it should not do so here. For example, the Commission has approved Verizon's application for Pennsylvania, notwithstanding the DOJ's lack of support in its evaluation, because Verizon's OSS noncompliance involved a single major issue (adequacy

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*Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734 ("271 Filing Requirements"), released March 23, 2001, at 3, 5.

<sup>26</sup> The rule is designed "to afford interested parties a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commissions can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the record." *E.g., Rhode Island 271 Order* ¶ 7.

<sup>27</sup> *Michigan 271 Order* ¶ 54.

<sup>28</sup> *See, e.g., 271 Filing Requirements* at 8 ("given our 90-day statutory deadline, this Commission looks to state commissions to resolve factual disputes wherever possible"); *Michigan 271 Order* ¶ 30.

of electronic billing) over which the Commission was able to take additional evidence that demonstrated that Verizon had resolved the problem-- although, even with that evidence, the Commission considered the issue a “close call.”<sup>30</sup> Similarly, the Commission approved SBC’s second application for Missouri, notwithstanding the DOJ’s lack of support, because the sole OSS-related issue that DOJ raised (concerning SWBT’s Loop Maintenance Operations Service (LMOS), which accommodates the processing of trouble reports for CLEC accounts) was also capable of resolution while the application was pending.<sup>31</sup> In other applications, where the DOJ has expressed concerns about a more extensive array of OSS problems, the Commission has either denied the application, or the BOC has withdrawn it.<sup>32</sup>

The latter result is appropriate here. SBC should be compelled to act in accordance with the statute and this Commission’s rules. It should act first to fully implement its OSS obligations, and only then apply for approval of its application. To do otherwise will allow SBC to prolong, perhaps indefinitely, the discriminatory provision of OSS to competitors.

## **II. SBC’S PERFORMANCE MEASURE DATA FAIL TO DEMONSTRATE COMPLIANCE WITH SECTION 271**

The comments in this proceeding also demonstrate that SBC cannot rely on its performance measure data as evidence that it is providing nondiscriminatory access to OSS and

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<sup>29</sup> *Michigan 271 Order* ¶ 55.

<sup>30</sup> *Pennsylvania 271 Order* ¶ 15.

<sup>31</sup> *Missouri 271 Order* ¶¶ 26-36.

<sup>32</sup> *See, e.g.*, Letter from James G. Harralson, Vice President and Associate General Counsel, BellSouth, to Magalie Salas, Secretary, Federal Communications Commission, CC Docket No. 01-277 (filed December 20, 2001) (explaining that Georgia/Louisiana application withdrawal was based on concerns by the Commission Staff relating to “(1) the timeliness of evidence demonstrating that competing carriers could integrate or have successfully integrated pre-ordering and ordering functionality; (2) BellSouth’s performance on service order accuracy; (3) the accuracy of certain performance data; (4) the timeliness of evidence of the “double FOC” performance issue related to the due date calculator; and (5) the timeliness of evidence related to

other network elements. The comments show that SBC's performance measures themselves do not capture important OSS problems, AT&T 29-49; TDS Metrocom 10-19; Mich. CLEC Assoc. 3-6, and experience since comments were filed reinforces the point. Moore/Connolly/Norris Reply Dec. ¶¶ 108-28.

BearingPoint, the independent third party selected by the Michigan PSC, has also continued to find significant problems with the integrity and reliability of SBC's data. In recent weeks, BearingPoint has opened three new exceptions and 12 observations that are further evidence that SBC's performance measure data are not accurate or reliable.

Moore/Connolly/Norris Reply Dec. ¶¶ 17-47.

BearingPoint's findings are all the more significant because of the stark contrast in SBC's performance with that of prior BOC applicants audited by BearingPoint. At the time of BearingPoint's most recent Michigan report (October 2002), SBC had passed only 11 percent of the applicable test criteria. In sharp contrast, prior BOC applicants have typically passed at least 95 percent and frequently 100 percent of the test criteria in similar PMR tests conducted by BearingPoint in the BellSouth region, New Jersey, Pennsylvania, and Virginia.<sup>33</sup> Not surprisingly, both the Michigan PSC and now the staff of the Illinois Commerce Commission have concluded that SBC has yet to show that its performance data are accurate and reliable. Moore/Connolly/Norris Reply Dec. ¶¶ 77-100.

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the allocation of resources in the Change Control Processes.”)

<sup>33</sup> BearingPoint's Master Test Plan for Michigan includes a performance metric review (PMR) of SBC's performance measure data gathering and reporting processes. Like the BearingPoint PMRs in the BellSouth and Verizon regions, the Michigan (and Illinois) PMR includes five separate testing areas: data collection (PMR 1), definitions and standards development and documentation (PMR 2), metrics change management (PMR 3), data integrity (PMR 4), and metrics calculations and reporting (PMR 5). For each of these test areas, BearingPoint assesses whether SBC's documents, systems, and processes satisfy particular test criteria.

SBC has therefore failed to make even a prima facie showing that its self-reported data can be relied upon to demonstrate that it has fully implemented its checklist obligations. It is SBC's burden to establish the reliability of its performance data. That burden should be particularly high where, as here, SBC seeks to use its self-reported data not only as evidence that regulators will be able to prevent backsliding, but as evidence that somehow trumps the extensive showing that CLECs have otherwise made of the discriminatory access that SBC provides to its OSS. SBC simply has no evidence showing that its data can bear such weight.

Indeed, the only evidence that SBC has even pointed to in an effort to validate its data are the reports submitted by its hand-picked financial auditor, Ernst & Young. But these reports have no probative value here, because Ernst & Young simply assumed that the data underlying SBC's performance was correctly reported. Having taken on faith, and not examined, the very issues of data integrity and reliability that BearingPoint has addressed at length, the Ernst & Young reports, including the most recent supplement, provide SBC no meaningful counterweight whatsoever to the detailed findings of BearingPoint. AT&T 36-47; TDS Metrocom 10-17; WorldCom 14-17; see Moore/Connolly/Norris Reply Dec. ¶¶ 48-58.

**A. SBC's Performance Measurement Data Are Both Inaccurate and Unreliable.**

The comments show that SBC's performance data measures fail to capture significant problems with SBC's OSS. For example, SBC's performance measures do not include SBC's improper rejection of AT&T orders, SBC's failure to provide line loss notifications on a timely and accurate basis, and SBC's failure to comply with notice requirements under the change management process. AT&T 30-32. These problems led DOJ to express concern "that the metrics might fail to depict in a meaningful way the actual experience of SBC's competitors"

and to conclude that the failure to capture such problems “could affect the validity of the relevant performance metrics.” DOJ Eval. 15 n.66.

Problems with the line loss notification performance measure PM MI 13 have continued since the filing of initial comments in this case. PM MI 13 measures the time from the transmission of the service order completion notice (an “EDI 865”) to the new carrier to the time that the LLN is sent to the former carrier. For some time, AT&T has sought an explanation from SBC for the thousands of AT&T LLNs omitted from SBC’s reported results for MI 13. It turns out that SBC has been omitting all SBC winbacks from performance measure MI 13. SBC has sought to justify this practice on the ground that SBC retail does not receive an EDI 865 notice for winback customers. But SBC clearly receives notice of the winback, and SBC’s exclusion of this large number of SBC winback orders from the MI 13 performance data renders the data meaningless. Indeed, in AT&T’s experience, approximately 75 percent of former customers return to SBC. Moore/Connolly/Norris Reply Dec. ¶¶ 108-12.

Tellingly, SBC has never drawn attention to the fact that SBC winbacks are not included in the PM MI 13 measure. In Michigan regulatory proceedings examining the LLN problems in April 2002, SBC represented that it would restate PM MI 13 to reflect late line loss notices resulting from systems errors that delayed recording of winbacks, thus implying that the measure includes such winbacks. Moore/Connolly/Norris Reply Dec. ¶¶ 113-17. SBC’s coyness is not surprising: SBC would not meet the 95 percent threshold if the large number of LLNs representing SBC winbacks were included in the performance measure. AT&T has recalculated the November and December 2002 PM MI 13 results to take account of the missing LLNs, and in November 2002, SBC’s Michigan performance slips from 97.42 percent to below the benchmark at 89.5 percent. In December 2002, the drop in Michigan is even more dramatic:

from 92.19 percent, which already is below the 95 percent threshold, to 74.51 percent, which is truly abysmal. Moore/Connolly/Norris Reply Dec. ¶¶ 117-19.<sup>34</sup>

AT&T has also continued to experience problems with spurious rejections that are not reflected in SBC's performance data. As noted above in Part I.A.2, between February 17 and 20, 2003, SBC erroneously rejected over 1000 AT&T Michigan orders (and 3000 regionwide) because SBC made inadvertent changes to its EDI group. As was the case with prior spurious rejections, AT&T 12-13, AT&T supplemented these orders to help speed the processing of the orders. Because the impact of compelling CLECs to supplement their orders is not reflected in SBC's performance data for FOCs or Missed Due Dates, SBC's reported performance results do not trigger penalties for these erroneously rejected orders. AT&T estimates that penalty payments from Ameritech of \$756,000 would have been payable if these erroneous rejections were reflected in the performance results. Moore/Connolly/Norris Reply Dec. ¶¶ 123-27.<sup>35</sup>

The comments also proved that SBC's performance measure data are neither stable nor reliable. As noted by AT&T, during the final eight months of 2002, SBC restated data for 907 performance measures, making 1607 separate changes to the data. AT&T 40. SBC's inability to generate accurate and stable performance measure data has continued since the filing of initial

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<sup>34</sup> A review of the raw SBC data reveal additional problems with SBC's PM MI 13 data. For example, for a substantial number of orders, Covad and SBC Advanced Solutions are listed as the winning carrier. As neither of these carriers provides voice service, these data are clearly erroneous. In Indiana's December 2002 data, the winning carrier on 2700 orders is listed as "Wallace," which is not a certificated carrier in that state, and AT&T is listed as losing several thousand customers, even though AT&T did not begin to offer service in Indiana until January 2003. Moore/Connolly/Norris Reply Dec. ¶¶ 120-22.

<sup>35</sup> Moreover, these erroneous rejections skew results of PM 9 (which breaks out rejected orders as CLEC-caused and SBC-caused) by treating the rejected orders as CLEC-caused rejects; if these rejected orders were properly classified, then AT&T-caused rejects in November 2002 would decline from 23.59% to 11.43% and in December 2002 from 16.13% to 10.50%. Moore/Connolly/Norris Reply Dec. ¶¶ 125-27.



comments. On February 20, 2003, SBC announced that it would restate several months of performance data for various performance measures on March 5, 2003. Including these planned March restatements, SBC will have restated 1063 measures from May 2002 to March 2003, and given the multiple nature of some of the restatements, SBC will have issued 1816 restatements to its performance data. With this latest reposting, the August 2002 data will have been restated *six* times. Moore/Connolly/Norris Reply Dec. ¶¶ 101-07. These changes provide yet further confirmation of the Michigan PSC's finding that SBC's performance metrics reporting process has not reached "a level of stability and dependability which would be required in the post-Section 271 environment to permit continued monitoring and assurances against discriminatory behavior."<sup>36</sup>

**B. The BearingPoint and E&Y Reviews Reveal Widespread Problems in SBC's Performance Data.**

The comments reflect the serious shortcomings in SBC's performance measure data as found by BearingPoint and Ernst & Young. AT&T 36-47; TDS Metrocom 10-19; WorldCom 13-20. Since the filing of initial comments, BearingPoint has found additional problems with SBC's performance measures, and E&Y has filed a supplemental report that continues to show important performance measure data problems. Given these performance data shortcomings, SBC cannot demonstrate that its performance measure data are reliable and accurate.

**1. BearingPoint's Testing Demonstrates the Widespread Problems with SBC's Performance Measure Data.**

As the comments note, BearingPoint was retained in 2000 to conduct a review of, *inter alia*, SBC's performance metric reporting system. Well into its third year, BearingPoint's testing

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<sup>36</sup> Michigan Report 22. The Michigan PSC applied the wrong standard in concluding that it could support SBC's Section 271 application notwithstanding its finding that SBC's performance

is still not complete, largely due to problems with SBC's performance measure data, SBC's business rules, and SBC's inability to resolve outstanding issues. AT&T 37-38; TDS Metrocom 10-11; Mich. CLEC Assoc. 3, 6. BearingPoint will still be continuing its review after this Commission must render a decision on SBC's application. AT&T 37-38; TDS Metrocom 10-11; WorldCom 14. As the success of other BOCs in passing comparable BearingPoint tests demonstrates, the lengthy audit period required in Michigan reflects not on BearingPoint, but on the inadequacy of SBC's reporting systems.

The comments reflect the broad areas in which SBC's performance data are not reliable or accurate. SBC has been unable to satisfy test criteria relating to the data collection and storage, AT&T 39-40, and its data retention and change management processes also were the subject of several exceptions. *Id.* 40-41. In the area of data integrity, for example, BearingPoint still has not completed its work and has 20 open exceptions and observations. On metrics replication, BearingPoint's testing shows that SBC's performance data cannot be replicated on a regular basis and are not consistent with SBC's business rules. AT&T 42-43.

Since the filing of initial comments, BearingPoint has continued its review of SBC's performance measure data and has added three new exceptions and 12 new observations. These new problems affect all areas of performance data and continue to demonstrate the significant problems with SBC's performance measure process. Exception 186 finds that SBC has failed to retain its data for the two years required under Michigan law, and includes findings that SBC has discarded some data after only a few months. Such practices undermine the efforts of auditors to verify SBC's performance reports and reconcile data. Moore/Connolly/Norris Reply Dec. ¶¶ 18-22.

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measure reporting process lacked stability and dependability. AT&T 35-36.

In Exception 187, BearingPoint found that SBC had developed incomplete or inaccurate documentation setting forth the calculation logic for over a third of the performance measures. As a result, parties cannot determine how the performance results are determined or the calculations made. Moreover, the existence of documentation errors may lead to inconsistent performance results over time. These documentation problems also affect PMR 4 data integrity and PMR 5 metric replication tests, as problems with the calculation of performance results can lead to data performance errors and the inability to replicate results. These documentation problems undercut SBC's claim that its performance data are accurate and "above suspicion." Moore/Connolly/Norris Reply Dec. ¶¶ 23-31.

Exception 188 relates to SBC's failure to provide accurate data flow diagrams and data element maps for 12 measurement groups and 42 performance measures. Because these documents are used by SBC analysts and programmers who manage the data underlying the performance results, their accuracy is critical if systems changes are to be made correctly. As BearingPoint explained in this Exception 188, "[a]ccurate documentation, which describes the flow of performance data through [SBC's] systems, is necessary to maintain consistency in the resulting calculation process and to enable effective management of change to the data flows." BearingPoint Exception 188. Indeed, the SBC documentation problems described in BearingPoint Exceptions 187 and 188 may contribute to the large number of software and coding errors made by SBC personnel in SBC's OSS software. Moore/Connolly/Norris Reply Dec. ¶¶ 32-33.

BearingPoint has also recently opened a dozen new Observations cataloging additional problems with SBC's performance measure process. A number of these Observations involve SBC's failure to follow business rules, and BearingPoint established other observations because

SBC used inaccurate data or excluded appropriate data in performance measure calculations. In Observation 809, for example, SBC's data for PM 10 (Percentage Mechanized Rejects Returned Within One Hour of Receipt of Reject in MOR) and PM 11 (Mean Time to Return Rejects) reported negative time durations in 40 percent of the transactions examined. Moore/Connolly/Norris Reply Dec. ¶¶ 34-40. This negative time duration is hardly evidence of accurate and reliable performance data.

With respect to PMR 5 (Data Replication), BearingPoint still cannot replicate many of SBC's results. Observations 802, 805, and 806 (all opened February 13, 2003) and Observation 812 (opened February 27, 2003) all relate to BearingPoint's inability to replicate SBC's July 2002 data. An extraordinary number of performance measures – 104 -- have repeatedly failed the PMR 5 data replication test. These multiple-failing performance measures include a number of performance measures that this Commission has relied upon in the past in ruling on Section 271 applications: PM 13 (Order Processing Percent Flow Through), PM 13.1 (Total Order Process Percent Flow Through), PM 10.4 (Percentage of Orders Given Jeopardy Notices), PM 7.1 (Percent Mechanized Completions Returned Within One Day of Work Completion), PM 17 (Billing Completion), PM 19 (Daily Usage Feed Timeliness), and PM 67 (Mean Time to Restore). These are significant performance measures, and BearingPoint's repeated inability to replicate the data for these measures is telling evidence of the instability of SBC's performance measure data and processes. Moore/Connolly/Norris Reply Dec. ¶¶ 41-47.

**2. The Ernst & Young Review Is Seriously Flawed but Still Found Significant Problems with SBC's Performance Measures.**

The comments reflect what everyone knows: SBC hired E&Y to conduct an end run around the ongoing BearingPoint test. E&Y serves as SBC's financial statement auditor, and it

performs consulting work for SBC in addition to performing audit work for SBC. Thus, as the comments note, E&Y is hardly an “independent” third party but instead worked with SBC alone (without CLEC involvement) to develop a limited test plan that catered to SBC’s requirements and was in no way comparable to the more rigorous independent testing being conducted by BearingPoint. AT&T 43-44; TDS Metrocom 11-14; Mich. CLEC Assoc. 3-6; WorldCom 14-16. Having fixed the procedures to be applied by E&Y, SBC received the expected results and touts those findings to the Michigan PSC and this Commission. But these results are a classic case of “Garbage in, garbage out.” TDS Metrocom 10-14.

The comments demonstrate that E&Y’s seriously flawed procedures and shortcuts undermine the validity of its conclusions. For example, whereas BearingPoint sought to verify whether the underlying data on which SBC’s performance reports are based were accurate and reliable, E&Y simply assumed that the underlying raw data provided by SBC was correct. Unlike BearingPoint, E&Y never conducted an end-to-end, “military-style” test. E&Y limited its exceptions to unilaterally defined “material” exceptions, unlike BearingPoint which noted every exception. E&Y tested orders from SBC’s five-state region, unlike BearingPoint which limited its testing to Michigan. E&Y accepted SBC’s interpretation of SBC’s business rules in reaching conclusions about SBC’s actions, unlike BearingPoint which tested the consistency of SBC’s interpretation of the business rules with the performance measure and found substantial discrepancies. E&Y also did not test the accuracy of SBC’s restatements in response to E&Y’s findings, unlike BearingPoint which tested all restatements to ensure that the restatements were properly performed. In addition, many of E&Y’s data integrity findings may no longer be valid because SBC has changed the data flows for various measurement groups from the MOR/Tel system tested by E&Y to the ICS/DSS system that is currently being retested by BearingPoint; if

the test results change, then E&Y's prior testing will no longer be valid. AT&T 44-46; TDS Metrocom 13-17. With all the "winks" and "nods" given by E&Y in favor of SBC, it is no wonder that E&Y could be in a position to issue reports supporting SBC in such a short time when BearingPoint is still working on resolving numerous SBC exceptions and open items.

The comments also demonstrate that, even ignoring the significant issues of bias and procedural flaws, the results of E&Y's testing still show significant problems with SBC's performance data. For example, E&Y blindly accepted SBC's interpretation of its business rules and did not test to determine whether SBC's interpretation was consistent with those rules. In addition, in instances in which E&Y identified problems, SBC's response was often to implement a prospective change that E&Y did not test or to perform a restatement that E&Y did not review. AT&T 46-47; Mich. CLEC Assoc. 3-5.

Since the filing of initial comments in this proceeding, E&Y has filed its Supplemental Report Regarding Management's Assertions dated February 28, 2003 (the "Third Corrective Action Report"). In this report, E&Y describes actions taken by SBC to correct problems found in E&Y's prior reports. This Third Corrective Action Report has the same procedural and substantive flaws identified by AT&T and other CLECs in their comments but again also serves to illustrate ongoing problems with SBC's performance measure processes and data. Moore/Connolly/Norris Reply Dec. ¶¶ 49-58.

As an example, E&Y states in the Third Corrective Action Report that it has not conducted any review of SBC computer program code changes that SBC has made to address certain problems identified by E&Y. Without such a review, there is no evidence that the changes have been made accurately or correctly. Moore/Connolly/Norris Reply Dec. ¶¶ 55-56.

In addition, the E&Y Third Corrective Action Report makes clear that SBC has not completed implementation of a wide range of remedial steps needed to resolve problems with its performance data. On this point, E&Y states that it will be issuing its “final report” in the second quarter of 2003 to address remaining correction action issues. Given the many procedural and substantive problems with the E&Y report, and the ongoing nature of E&Y’s review, SBC cannot claim that its performance measure data are complete and accurate. *Id.* ¶¶ 57-58.

**C. SBC’s Performance Measure Processes and Data Have Been Found Unreliable by the Illinois Commerce Commission Staff.**

In its Application, SBC has claimed that this Commission should consider in this proceeding the progress that SBC is making in satisfying outstanding test criteria in the Illinois PMR test. Ehr Aff. ¶ 237. That Illinois PMR test is being conducted at the same time as the testing in Michigan, and in light of the region-wide nature of SBC’s performance measure processes, the testing covers many of the same issues. Moore/Connolly/Norris Reply Dec. ¶¶ 59-60. In light of the similar nature of the PMR tests, it is telling that the Illinois Commerce Commission Staff on February 21, 2003 reported to the ICC on the BearingPoint and E&Y tests and found that SBC’s performance measure data are:

“not reliable and should not be used as evidence of SBC Illinois’ compliance with the Section 271 checklist, nor as a public interest component, nor [as] an assurance that the company will not backslide in its performance once granted Section 271 approval by the Federal Communications Commission . . . .”<sup>37</sup>

The Illinois Staff report reviewed the BearingPoint findings and determined that they “raise serious doubts as to the integrity and accuracy of SBC Illinois’ performance measure

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<sup>37</sup> Phase II Affidavit of Nancy B. Weber on Behalf of Illinois Commerce Commission, dated Feb. 21, 2003, *Investigation Concerning Illinois Bell Telephone Company’s Compliance with Section 271 of the Telecommunications Act of 1996* (Ill. Comm. Comm.) Docket No. 01-0662, ¶

data . . . .”<sup>38</sup> In support, the Illinois Staff cited SBC’s failure to satisfy test criteria in the various PMR tests, numerous problems with the integrity of SBC’s data, and “grave deficiencies” in SBC’s change management processes. Moore/Connolly/Norris Reply Dec. ¶¶ 61-68. The Illinois Staff concluded “there is more work to be done and that at this time the Commission should not rely upon the performance measurement data being reported by the company.”<sup>39</sup>

The Illinois Staff did not find the E&Y report to the contrary. It concluded that the “findings in the E&Y report present strong evidence” that SBC’s performance data are “unreliable.”<sup>40</sup> In reaching that judgment, the Staff agreed with points raised by AT&T and others as to the limits of the E&Y reports as evidence of the accuracy and reliability of SBC’s performance measure data. Moore/Connolly/Norris Reply Dec. ¶¶ 69-76.

**D. SBC’s Results in the Michigan BearingPoint PMR Test Are Far Worse than Those in Similar BearingPoint PMR Tests.**

The Michigan PSC cited the *Georgia/Louisiana 271 Order* in which there was an incomplete performance measure test in arguing that the current results of the incomplete BearingPoint and E&Y tests are sufficient to support a Section 271 application.<sup>41</sup> A comparison of BearingPoint Michigan PMR test results with BearingPoint PMR test results in jurisdictions in which a BOC has received Section 271 approval demonstrates that SBC’s application is exceedingly premature. In Michigan, at the time of the BearingPoint report in October 2002, SBC had passed 11 percent of the test criteria, failed 50 percent of the test criteria, with another 39 percent of the test criteria to be indeterminate. In six other Section 271 applications in which

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<sup>38</sup> *Id.* ¶ 53.

<sup>39</sup> *Id.* ¶ 78.

<sup>40</sup> *Id.* ¶ 83.

<sup>41</sup> Michigan Report 22.



BearingPoint conducted comparable PMR testing,<sup>42</sup> including the Georgia application cited by the Michigan PSC, the BOC applicant had a pass rate on the test criteria above 90 percent and often 100 percent. This Commission should not lower the bar for SBC's application and approve SBC's application at this time. Moore/Connolly/Norris Reply Dec. ¶¶ 77-78.

**Georgia.** At the time of the filing of the Georgia application in February 2002, BearingPoint had completed two performance metric audits, and a third was in progress. The three audits reviewed the same five test segments as the Michigan PMR test, except that the Georgia test included additional test segments and had more stringent testing criteria requiring 100 percent to pass, as opposed to the 95 percent level in Michigan. In the first Georgia audit, BearingPoint found that BellSouth satisfied 99 percent of the test criteria, and in the second Georgia audit, BearingPoint determined that BellSouth satisfied 100 percent of the test criteria. The third audit was ongoing at the time of the application. This Commission relied on the two completed audits in finding that BellSouth's performance data were accurate.<sup>43</sup> Moore/Connolly/Norris Reply Dec. ¶¶ 79-87.

**BellSouth Five-State and Florida/Tennessee Applications.** In these applications, no separate PMR testing was conducted. Citing the region-wide nature of BellSouth's OSS, BellSouth relied on the results of the prior two Georgia audits. Although the third Georgia audit was still ongoing, BellSouth argued that the results of the first two audits demonstrated that the performance data were reliable. The Commission cited the extensive third party auditing in

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<sup>42</sup> These states were Georgia, BellSouth Five State Application (Alabama, Kentucky, Mississippi, North Carolina, South Carolina), Florida/Tennessee, New Jersey, Pennsylvania, and Virginia.

<sup>43</sup> *Georgia/Louisiana 271 Order* ¶ 19.

concluding that BellSouth's performance metric data were accurate and reliable.<sup>44</sup>

Moore/Connolly/Norris Reply Dec. ¶¶ 88-90.

**New Jersey.** Verizon also relied on a BearingPoint PMR test as support for the reliability of its performance data in New Jersey. The PMR test was substantially similar to the Michigan test. BearingPoint determined that Verizon had satisfied 100 percent of the test criteria. Moore/Connolly/Norris Reply Dec. ¶¶ 91-92. The Commission relied on this test in finding that Verizon's performance measure data were accurate.<sup>45</sup>

**Pennsylvania.** In Pennsylvania, BearingPoint conducted a test similar to the test conducted in Michigan, and in its final report concluded that Verizon had satisfied 100 percent of the test criteria in PMR 1, PMR 2, and PMR 3. For PMR 4 (Change Management of Standards and Definitions Verification and Validation Review), Verizon satisfied five of eight test criteria. For these four test areas, Verizon satisfied 78 of 81 (96 percent) of the applicable test points. For PMR 5 (Metric Replication), Verizon satisfied 20 of 32 test criteria, or approximately 63 percent. Moore/Connolly/Norris Reply Dec. ¶¶ 93-95.

Because Verizon satisfied only 20 of 32 of the test criteria for PMR 5, the Pennsylvania PUC advised Verizon to have a separate replication study performed of Verizon's January 2001 performance data. BearingPoint conducted that study and replicated 99 percent of the metrics values reported by Verizon. In addition, BearingPoint conducted additional testing of new 20 new performance measures in which Verizon satisfied 100 percent of the test criteria.

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<sup>44</sup> *BellSouth Five State 271 Order* ¶ 16.; *Florida/Tennessee 271 Order*, ¶ 16 n.47.

<sup>45</sup> *New Jersey 271 Order* ¶¶ 78-79.

Moore/Connolly/Norris Reply Dec. ¶¶ 95-98. With this level of testing, the Commission determined that Verizon's Pennsylvania performance data were accurate.<sup>46</sup>

**Virginia.** In its Virginia application, Verizon again relied on a BearingPoint PMR study similar to the one conducted in Michigan. In the Virginia PMR study, Verizon satisfied 100 percent of the test criteria. Moore/Connolly/Norris Reply Dec. ¶¶ 99-100. Once again, the Commission determined that Verizon's performance measure data were accurate.<sup>47</sup>

In sum, BearingPoint has now conducted PMR tests in several 271 proceedings. In each instance in which this Commission has approved the application, the applicant BOC had passed over 90 percent (and often 100 percent) of the test criteria. The contrast with SBC in Michigan could not be more stark. At the time of the BearingPoint report in October, SBC had passed 11 percent of the test criteria, and BearingPoint has yet to issue another report in Michigan. In light of the outstanding exceptions, new exceptions still being opened, outstanding observations, and unsatisfied criteria, SBC cannot show that its performance measure data are accurate, reliable, and complete as required for approval under Section 271, and as prior applicants have shown.

**E. SBC's Commitment to Data Reconciliation Is Illusory.**

SBC claims to be committed to engaging in data reconciliation with CLECs, but when AT&T has sought to do so recently, problems have arisen: the raw data are not made available, the data are sent but are inaccurate or incomplete, or the necessary subject matter experts are not available. These excuses belie SBC's claims about its commitment to data reconciliation.

For example, AT&T has requested various raw data files from SBC so that it can review SBC's performance measure data. The files supplied have been late or incomplete, requiring

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<sup>46</sup> *Pennsylvania 271 Order* ¶¶ 15-31.

repeated requests to obtain the complete data. It took three weeks to receive raw data for PM 9 so that AT&T could attempt to reconcile the erroneously rejected December 2002 orders that SBC had agreed to reflow. Moore/Connolly/Norris Reply Dec. ¶¶ 129-32. In other cases, as described in AT&T's opening comments, the raw data files have been incomplete or missing portions of necessary data. AT&T ¶¶ 48-49.

AT&T has also been unsuccessful in meeting with the necessary SBC subject matter experts on data reconciliation issues. Requests to hold such meetings are met with responses that these experts were not available or, after scheduling of the meeting, learning that the experts could not attend. With respect to SBC's practices relating to "No Access" and "Delayed Maintenance" codes for trouble tickets, AT&T scheduled a meeting with SBC for February 19, only to be told at the meeting that the individuals necessary to discuss the trouble ticket issues were not present. Moore/Connolly/Norris Reply Dec. ¶¶ 133-35. AT&T has requested another meeting with the necessary experts, has responded to an SBC request for further clarification as to the purpose of the meeting, and is now still awaiting scheduling of the meeting with the SBC experts. *Id.* ¶ 134.

In any event, while these data reconciliation efforts may shed additional light on the extent of SBC's data integrity problems, they cannot supplant the need for SBC to pass the BearingPoint test. The problems identified by BearingPoint are so pervasive that no CLEC could have confidence, even if its own data and SBC's were in accord on a given measure for one month, that the same would be true of any other month. It is therefore essential that SBC establish, through successful completion of the BearingPoint audit, the basic accuracy and reliability of its self-reported data.

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<sup>47</sup> *Virginia 271 Order* ¶ 27.

**III. APPROVAL OF SBC'S MICHIGAN 271 APPLICATION NOW WOULD NOT SERVE THE PUBLIC INTEREST.**

The comments also confirm that SBC has failed to demonstrate that it would serve the public interest to grant its Michigan application at this time. To the contrary, the comments confirm that granting SBC's application would stifle local competition.

No commenter disputes that CLECs have made some progress in bringing Michigan consumers a choice of local service provider. No commenter disputes that this nascent UNE-P based residential competition has already brought Michigan consumers tangible benefits in the form of lower prices and new plans. Nevertheless, these gains, though important, are not secure. As the DOJ aptly concludes, the record precludes a finding that the local Michigan market "is and will remain open to competitive entry." DOJ Eval. 6, 16-17. There can be no finding that SBC's entry into the long distance market is in the public interest when the future of local competition in Michigan remains so clearly at risk.

The foregoing record establishes that SBC still has substantial progress to make before it may fairly be found to have fully implemented its duty to provide nondiscriminatory access to OSS. Until that time, SBC will continue to hold an enormous advantage over CLECs in competing for local customers. And unless this Commission requires SBC to fix these problems before approving its application, there is simply no effective mechanism in place to compel SBC to fix the problems thereafter.

SBC has already announced its intention to continue force reductions in states with effective UNE-P based competition. See Part I.D, *supra*. But even if SBC were willing to put resources into improving CLEC access to OSS in a post-271 world, the Michigan PSC has conceded that it currently lacks the tools to identify defects in SBC's performance that would

prompt it to require such action: specifically, it doubts that “SBC’s performance metric reporting process has fully achieved a level of stability and dependability which will be required in the post-Section 271 environment to permit continued monitoring and assurances against discriminatory behavior.”<sup>48</sup> As the DOJ notes, that concern is “in tension” with the Michigan PSC’s reliance elsewhere on SBC’s performance data, and is further reason that the record precludes any finding that the Michigan is “fully and irreversibly” open to local competition. DOJ Eval. 16-17 & n.67.

The record also refutes SBC’s bromide that granting its 271 application will jump-start local competition in Michigan. The comments confirm that local competitors entered the Michigan market long ago after the Michigan PSC set cost-based UNE prices. AT&T 55-58; TDS Metrocom 35-37; see DOJ Eval. 4-6. The comments also refute SBC’s claim that Section 271 approval will stimulate long distance competition. As shown by the Michigan CLEC Association, SBC’s entry into the long distance market will not lead to lower long distance rates for Michigan consumers. Mich. CLEC Assoc. 17-21.<sup>49</sup>

Finally, the comments demonstrate that SBC’s performance remedy plan will not prevent backsliding. The SBC is currently subject to the performance remedy plan, but SBC’s obligations under the performance remedy plan have not prevented the many OSS, business rule, performance data, line splitting, and other problems described by commenters in this proceeding. The comments show that SBC treats penalties as a cost of doing business, and that penalties do

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<sup>48</sup> Michigan Report 22.

<sup>49</sup> As the Michigan CLEC Assoc. shows, SBC’s anticompetitive efforts to preserve its intraLATA toll revenues and the exorbitant margins SBC enjoys on its Michigan intraLATA toll business undercut any claim that Section 271 approval will result in lower long distance rates. Mich. CLEC Assoc. 19. SBC has earned 2001 toll revenues of \$459 million, which is higher than the toll revenue for all nine BellSouth states combined. *Id.*

not deter SBC's conduct. AT&T 58-59. Indeed, while SBC's application is premised on the availability of UNE-P, SBC's continuing efforts to eliminate UNE-P based competition provide no basis for predicting that SBC will fulfill any promises that it will take steps in the future to improve the ability of CLECs to use UNE-P to compete with SBC in Michigan. TDS Metrocom 37-38; Z-Tel. 11-12. Consistent with the public interest, SBC cannot have it both ways. The incentive of 271 approval should remain in place, as Congress intended, until SBC presents this Commission with concrete evidence sufficient to demonstrate that its local market is fully and irreversibly open to local competition. It has not done so in this application, and so its request for interLATA authorization should be denied.

### **CONCLUSION**

For the reasons stated above and in AT&T's opening comments, SBC's 271 application for Michigan should be denied.

Respectfully submitted,

/s/ Dina Mack

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David W. Carpenter  
SIDLEY AUSTIN BROWN & WOOD  
Bank One Plaza  
10 South Dearborn Street  
Chicago, Illinois 60603  
(312) 853-7000

Mark C. Rosenblum  
Lawrence J. Lafaro  
Dina Mack  
AT&T CORP.  
One AT&T Way  
Room 3A232  
Bedminster, NJ 07921  
(908) 532-1839

Mark E. Haddad  
SIDLEY AUSTIN BROWN & WOOD, L.L.P.  
555 West Fifth Street  
Los Angeles, California 90013  
(213) 896-6000

William A. Davis, II  
John J. Reidy III  
AT&T Corp.  
222 West Adams Street, Suite 1500  
Chicago, Illinois 60606  
(312) 230-2636

Alan C. Geolot  
R. Merinda Wilson  
Richard E. Young  
SIDLEY AUSTIN BROWN & WOOD, L.L.P.  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000

*Attorneys for AT&T Corp.*

March 4, 2003



**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of March, 2003, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: March 4, 2003  
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

## **SERVICE LIST**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, D.C. 20554\*

Qualex International  
Portals II  
445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, D.C. 20554

Janice Myles  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Dorothy Wideman  
Ann Scheidewind  
Michigan Public Service Commission  
P.O. Box 30221  
Lansing, MI 48909

Layla Seirafi-Najar  
U.S. Department of Justice  
Antitrust Division  
Telecommunications and Media  
Enforcement Section  
1401 H Street, NW, Suite 8000  
Washington, D.C. 20530

Michael K. Kellogg  
Geoffrey M. Klineberg  
Kellogg Huber Hanson Todd & Evans  
1615 M Street, NW  
Washington, D.C. 20036

James D. Ellis  
Paul K. Mancini  
Martin E. Grambow  
SBC Communications Inc.  
175 E. Houston  
San Antonio, TX 78205

Matthew D. Bennett  
Alliance for Public Technology  
919 18<sup>th</sup> Street, NW, Suite 900  
Washington, D.C. 20005

Roderick S. Coy  
Leland R. Rosier  
Clark Hill PLC  
2455 Woodlake Circle  
Okemos, MI 48864-5941

Richard D. Gamber  
Michigan Consumer Federation  
4990 Northwind Drive, Suite 225  
East Lansing, MI 48823

Barry Cargill  
Small Business Association of  
Michigan  
222 North Washington Square, Suite 100  
Lansing, MI 48933

Richard M. Rindler  
Patrick J. Donovan  
Harisha J. Bastiampillai  
Swidler Berlin Shereff & Friedman  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007

Michael A. Cox, Attorney General  
State of Michigan  
525 W. Ottawa Street  
6<sup>th</sup> Floor, G. Mennan Williams Building  
Lansing, MI 49813

---

\* Filed electronically via ECFS

Marybeth Banks  
H. Richard Juhnke  
Sprint Communications Company  
401 9<sup>th</sup> Street, NW, Suite 400  
Washington, D.C. 20004

Richard M. Rindler  
Robin F. Cohn  
Michael W. Flemming  
Swidler Berlin Shereff Friedman  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007

Keith L. Seat  
WorldCom, Inc.  
1133 19<sup>th</sup> Street, NW  
Washington, D.C. 20036

Jonathan E. Cannis  
Michael B. Hazzard  
Brett Heather Freedson  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, D.C. 20036

